Religious Freedom in Public Schools

CASE BRIEFS

UTAH 3Rs PROJECT

Rights. Responsibility. Respect.

Oklahoma Statewide Charter School Board v. Drummond: The 3Rs Perspective

Introduction

Oklahoma Statewide Charter School Board v. Drummond (2025) was a highly anticipated and closely watched Supreme Court case of 2025. It presented the question of whether a state may include a religious school in its charter school program or if the Establishment Clause forbids it. In a time of major changes in how religion is handled in public schools, the Utah 3Rs Project examines this difficult question through the framework it has long applied to religion in public schools: Rights, Responsibility, and Respect.

Background

St. Isidore of Seville Catholic Virtual School was created by the Archdiocese of Oklahoma City and the Diocese of Tulsa as an online Catholic charter school. Its planned curriculum featured Catholic beliefs and values infused into traditional secular subjects, as opposed to religious education being separated as its own subject. In 2023, the Oklahoma Statewide Virtual Charter School Board approved St. Isidore's application and organized a contract that would have made it the first religious public charter school in the nation.

Charter schools occupy a unique and complex space in public education. They receive public funding and, in Oklahoma and most other states, are formally designated as public schools; however, they are also privately organized and have far greater independence over curriculum and mission than a traditional public school.

Gentner Drummond, Oklahoma Attorney General, sued to block the contract, arguing that it violated the Oklahoma Constitution's requirement that public schools be nonsectarian, the state Charter Schools Act, and the federal Establishment Clause. In June 2024, the Oklahoma Supreme Court ruled 6-2 in favor of Drummond that the contract was unlawful.[1] Central to that ruling was the court's conclusion that a charter school, though privately organized, is a "state actor" under Oklahoma law, and that a state actor operating an avowedly religious school violates the Establishment Clause.[2]

[1] Drummond, 2024 OK 53, 558 P.3d 1 (Okla. 2024).

[2] Id. at ¶ 41.

The Charter School Board and St. Isidore appealed to the Supreme Court as separate cases, and the U.S. Supreme Court agreed to hear both of them as one. Oral argument was held on April 30, 2025. Justice Amy Coney Barrett recused herself with no public explanation as to why, though it has been speculated that her decision may have been related to the involvement of Notre Dame's Religious Liberty Clinic in representing St. Isadore—given Barrett's prior role as a Notre Dame law professor. Leaving the remaining eight justices to decide the case. On May 22, 2025, the Court issued an unsigned order saying the judgment was "affirmed by an equally divided Court."[3] With an equal 4-4 split between the judges, no opinion, votes, or reasoning were offered. As a result, the Oklahoma Supreme Court's decision stands, but only to the specific case.

Constitutional Principles at Play

State Actor Question

One of the deciding questions the courts wrestled with in this case was whether charter schools are "state actors." If they can be determined to be "state actors," then the school would essentially operate as an arm of the government and could not provide religious instruction or otherwise act in a way that violates the Establishment Clause. If they can be determined to be a private entity, the question whether they would be entitled to the same access to public benefits as other participants arises. The Oklahoma Supreme Court answered that charter schools are state actors, pointing to the pervasive state regulation, funding, and oversight built into Oklahoma's charter school law.[4]

In the Supreme Court oral hearing, attorneys from both sides presented compelling perspectives on the state actor question. Counsel for the charter school board and St. Isidore answered by pointing to a two-part test the Court has used to identify a governmental entity in the past—state creation and state control—and argued that neither was present because St. Isidore was organized by two private Catholic organizations and is run by a privately selected board rather than one appointed by the state.[5]

Justice Sotomayor pushed back, arguing that the hallmark of public education is that it is funded by taxpayers rather than private donations, and that a charter school, unlike other historical examples of privately funded religious education, exists only because of government funding—making the government, in her view, the actual creator of the school regardless of who sits on its board.[6]

Because of the 4-4 divided court, the case fell back on the Oklahoma Supreme Court's ruling that charter schools are considered state actors, and, thus, that it would be unconstitutional for St. Isadore to be approved as a charter school in the state of Oklahoma. While this ruling ultimately applied to this case, it left no federal precedent for future cases that ask the same state actor question.

[3] *Oklahoma Statewide Charter School Board v. Drummond*, 605 U.S. ___ (2025) (per curiam).

[4] *Drummond*, 2024 OK 53 at ¶¶ 21–26, 29.

[5] Transcript of Oral Argument at 44–46, *Oklahoma Statewide Charter School Board v. Drummond*, Nos. 24-394, 24-396 (U.S. Apr. 30, 2025) (argument of Mr. McGinley, discussing *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374 (1995)).

[6] Id. at 46–47.

Free Exercise v. No Establishment

This case demonstrates the tension that courts address as they balance the two religious clauses in the First Amendment, as seen in the language "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[7] The Supreme Court never concluded on whether this case was ultimately a free exercise case, in which Oklahoma discriminated against St. Isidore because of its religious character, or if it was fundamentally an Establishment Clause case, in which Oklahoma refused to allow religious instruction to be taught in its public school system.

The petitioners argued from the free exercise perspective and based their argument on three recent cases popularly referred to as the "free exercise trilogy." These cases include *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017), *Espinoza v. Montana Department of Revenue* (2020), and *Carson v. Makin* (2022), which together hold that once a state opens a public program to private participants, it cannot exclude an otherwise eligible participant solely because of its religious affiliation.[8] Counsel for the Charter School Board, James A. Campbell, began his argument by describing Oklahoma's charter program as one that "relies on private organizations to create more educational options" and "empowers" the groups with "broad autonomy over their mission, curriculum, and operations." He pointed towards existing charter schools built to emphasize Native American culture, environmental stewardship, STEM, performing arts, and foreign-language immersion, and he argued that excluding religious groups wrongly treated religion as the "wrong kind of diversity."[9] Such religious exclusion, he argued, violates the Free Exercise Clause regardless of how the state labels the program.

On the other hand, the perspective that ultimately prevailed in Oklahoma—though not as a precedent for the rest of the country—saw this case from the Establishment Clause perspective. Oklahoma's counsel, Gregory Garre, outlined this argument in three parts to explain why this case is an Establishment Clause case and the "free exercise trilogy" could thus be dismissed. He first asserted that charter schools are public schools in every meaningful way as they "bear all the hallmarks" of public schools that the Supreme Court has previously established—"they're free, open to all, funded by taxpayers,[and] controlled by the state with respect to their curriculum."[10] He then made his second assertion that "teaching religion as truth in public schools is not allowed." Along with this point, he acknowledged that Oklahoma, among other states, "respects and promotes through vouchers and other means the abilities of families to secure such an education in a private school," but argues that the line has been drawn to prohibit devotional teaching in public schools. Counsel Gregory Garre's third and final point was that St. Isidore was not seeking access to the charter program on the same terms as other charter schools; it was seeking a special exemption from the nondiscrimination and nonsectarian requirements that define what a charter school is under both Oklahoma and federal law.[11]

[7] U.S. Const. amend. I.

[8] *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020); *Carson v. Makin*, 596 U.S. 767 (2022).

[9] *Drummond*, Oral Arg. Tr. at 4.

[10] Id. at 91.

[11] Id. at 88–91.

Utah 3Rs Project Perspective

Introduction

The competitive arguments and inconclusive ending of *Oklahoma Statewide Charter School Board v. Drummond* both continue the current conversation on religion's role in public education yet also leave us with no satisfying conclusion. The 3Rs framework—Rights, Responsibility, and Respect—offers a way to navigate this conversation with integrity and commitment to uphold the principles of the Constitution itself.

Rights

The first R—*Rights*—acknowledges that all people have the right to religious liberty. The Williamsburg Charter of 1988, a foundational document for the 3Rs perspective, states, "This right to religious liberty based upon freedom of conscience remains fundamental and inalienable. While particular beliefs may be true or false, better or worse, the right to reach, hold, exercise them freely, or change them, is basic and non-negotiable."[12] Keeping this in mind while considering *Drummond,* the right to religious liberty protects the rights of the Catholic families and students who sought to enroll in St. Isidore to enjoy an education centered around their faith. This is a right that has been long exercised through religious private schools throughout the nation, and it is likely that a state-funded religious charter system could make it easier for many families to have their children attend a religious school because of the financial burden being lifted—allowing for religious charter schools could be positive in this way. However, at the same time, Justice Sotomayor's questioning in the argument points to another set of equally important rights—the rights that are guaranteed by the Constitution's restriction on creating an established religion.[13] This can be interpreted to grant the taxpayers and students of other faiths, or no faith, the right to have their state government remain neutral towards religion and not endorse any particular religion, in this case Catholicism, by funding and carrying out religious education. The Williamsburg Charter teaches of the importance of protecting the rights of *all* people, especially those that are often forgotten. It reads "A society is only as just and free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular communities."[14]

Taken together, these two passages from The Williamsburg Charter show that rights work in both directions. The Charter does not treat religious liberty as a right reserved for a group that happens to be seeking accommodation in a given case; it insists that religious liberty equally belongs to the Catholic families petitioning for St. Isidore and to the taxpayers and families of other faiths, or no faith, who object. In this sense, *Drummond* is a case in which two claims to religious liberty are in tension, claims appealing to each of the two clauses in the First Amendment. The Charter's warning that a society is only as just as its treatment of "the beliefs of its smallest minorities and least popular communities" cautions against resolving that tension by simply privileging the more visible or more organized claim. Whatever the Court ultimately holds, the first R reminds us that any outcome in *Drummond* must be judged by whether it honors religious liberty as a right held by everyone in the dispute, not just the party bringing suit.

[12] *The Williamsburg Charter: A National Celebration and Reaffirmation of the First Amendment Religious Liberty Clauses* (Washington, DC: Williamsburg Charter Foundation, 1988), sec. I.

[13] *Drummond*, Oral Arg. Tr. at 46–47.

[14] Williamsburg Charter Foundation, "The Williamsburg Charter," sec. I.

Responsibility

The Williamsburg Charter of 1988 teaches that the second R, Responsibility, always accompanies rights. It states that rights are "best exercised when each person and group guards for all others those rights they wish guarded for themselves." When people abandon the responsibility to protect the rights of others, they put their own rights in jeopardy of being infringed upon.

It is important to remember that the responsibility to protect and uphold religious liberty falls not only on the courts, but on other areas of government such as legislatures and bureaucratic charter school boards and even on individuals in the community. In the hearing, Justice Gorsuch brought up a question about a "boomerang effect"—the possibility that states might respond to a ruling for religious charter schools by asserting tighter control over charter school boards.[15] The concern of a "boomerang effect" is a reminder that the courts do not hold the entire responsibility to protect the rights of all—legislatures retain a vast responsibility for how they design such programs and carry them out. Each individual involved holds some form of responsibility to remember that all members of the community have a claim upon the exact same rights they have and protect those rights for everyone.

Respectfully Engaging in Civil Dialogue

The last of the three Rs—respectfully engaging in civil dialogue—is a practical and necessary principle for a successful democratic society. In cases like this, it is especially easy to pick a side of the dispute and obsess over why that point of view is correct, while often forgetting to even hear what the opposing side has to say. That is not enough. The last R does not ask either side to concede that the other has the better argument, but it insists that conversations need to be had and respect needs to be at the center of those conversations. The non-conclusive ending to *Drummond* certainly proved that there is no easy answer to this case. The two sides made careful, sincere constitutional arguments to eight Supreme Court justices, and the justices themselves were left with no majority answer. If the Supreme Court itself acknowledges that there are valid points to both sides of the argument, others should approach conversations with a sort of respect that reflects the same. Doing so provides communities with the opportunity to grow in their abilities to resolve difficult conflicts, thereby bettering their ability to live in peace.

The Utah 3Rs Project promotes the academic study of religion in public schools rather than a devotional approach. This is a distinction that maps onto a deeper issue that the justices raised at argument: there is a difference between teaching students about religion to prepare them to live in a world with religious differences and a state directly funding and operating a school whose purpose is to further religion. The Williamsburg Charter's description of the Religion Clauses as "articles of peace" rather than "articles of faith" is a useful reminder that the question this argument left open—how far a state may go in including religious options within public education—is not one that a single case, or a single vote, will resolve.[16] It will be worked out over further litigation, legislation, and, in the meantime, hopefully through the kind of respectful civil dialogue the 3Rs framework advocates for.

[15] *Drummond*, Oral Arg. Tr. at 30–31.

[16] Williamsburg Charter Foundation, "The Williamsburg Charter," sec. II.

Conclusion

The questions in *Oklahoma Statewide Charter School Board v. Drummond* get to the very tension the Supreme Court has been addressing as it reshapes boundaries around religion in public education. With no final decision from the Supreme Court and the Oklahoma Supreme Court's order only applies in Oklahoma, other states and future parties will continue to test these questions. Whatever a future court may hold, the Utah 3Rs Project offers a model that allows for community members to work through complex conflicts like this while valuing the very constitutional principles that this country was built upon—Rights, Responsibility, and Respect.

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